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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of 1993 Annual Access Tariff Filings	CC Docket No. 93-193, Phase I, Part 2
GSF Order Compliance Filings	CC Docket No. 94-65
1994 Annual Access Tariff Filings	
1995 Annual Access Tariff Filings	
1996 Annual Access Tariff Filings	

REPLY COMMENTS OF PACIFIC BELL

THE APPLICATION FOR REVIEW IS TIMELY

AT&T argues that the Application for Review is an untimely petition for reconsideration of the April 17, 1997 order. In this new argument, which AT&T did not raise in the Bureau proceedings below, AT&T characterizes the issue as a challenge to the "Commission-specified procedures for calculating refunds under the April 17 order."[1] This is untrue. The April 17 order does not *specify* any procedures for performing this calculation. Rather, it says in paragraph 97 for LECs to "correct their PCIs and other pricing limits on a going-forward basis so that those PCIs are what would have been in place had they been calculated consistent with the Commission rules and decisions. Recalculations are to be made for the price cap index in

[1] AT&T p. 3.

each basket..."[2] Pacific Bell correctly followed the Commission's instructions to reallocate the sharing obligation to all baskets, beginning with the 1994 Annual Filing, so that the resulting revised PCIs in effect as of June 30, 1997 "are what would have been in place had they been calculated consistent with the Commissions [sic] rules and decisions."[3] The Commission went on in the Order to require refunds to be calculated by a one time exogenous cost adjustment.[4]

Nothing in the April 17 order precludes the methodology used by Pacific in performing the refund calculation. Thus, no petition for reconsideration of that order was necessary. We do not contest the findings as to liability contained in the April 17 order and therefore no PFR was submitted to the April 17 order.

PACIFIC'S METHODOLOGY FOR CALCULATING THE EXOGENOUS ADJUSTMENTS IS THE ONLY METHOD WHICH DOES NOT RUN AFOUL OF THE COMMISSION'S PRESCRIBED SHARING RULES.

Both AT&T and MCI claim that Pacific made a business decision to refrain from allocating sharing to EUCL revenues, and therefore Pacific should not be able to take the offsetting upward adjustments made necessary by the Commission's April 17 order.[5] However Pacific's decision was based on the Commission's rule that exogenous cost adjustments should be apportioned on a cost causative basis."[6] Cost causative was never defined by the Commission. And, as the Commission itself determined in 1993, there was "sufficient uncertainty" as to whether the exclusion of end user revenues from the common line basket for sharing purposes was proper. "The Commission through its regulatory power cannot, in effect,

[2] Order ¶97.
[3] Order ¶97.
[4] Order ¶104-106.
[5] AT&T p.7.
[6] 47 CFR 61.45(d)(4).

punish a member of the regulated class for reasonably interpreting Commission rules."[7] Pacific cannot now be penalized for interpreting uncertain and undefined Commission rules in a reasonable way. Therefore, the claim that a conscious business decision was made for which Pacific bears the risk is untenable.

As Pacific pointed out in its AFR, if it is not permitted to take offsetting exogenous adjustments in its traffic sensitive and trunking baskets, then its sharing liability will have increased to 64% from the prescribed amount of 50%. The amount of sharing has never been at issue either in proceedings below, or in the instant case. MCI attempts to refute this argument by arguing that section 204 permits the Commission to issue refunds reflecting overcharges. However, unlike a typical carrier-controlled filed rate matter, the FCC has prescribed the sharing amount of 50%. It cannot now depart from that prescription.

MCI argues that requiring this refund in solely the common line basket does not increase our sharing liability because this refund should not be considering sharing dollars. MCI evidently believes that if it calls the sharing reallocation a rate refund, it can convert the sharing liability to a generic refund. However, form should not be put over substance. For each year in question, Pacific shared the appropriate number of dollars with its customers. Requiring a one-sided refund now equates to ordering us to increase that sharing amount, no matter what MCI or the Bureau decides to call it.

Next, MCI argues that because our rates were within a zone of reasonableness under price caps, we are not entitled to the upward exogenous true up.[8] MCI's argument begs the

[7] Satellite Broadcasting Company v. FCC, 824 F.2d 1, 4 (D.C. Cir. 1987).

[8] In the course of this argument, MCI states that our "common line basket API was above the true common line PCI for much of the period under consideration." MCI at 5. As MCI should be aware, the common line basket has no API (47 C.F.R. §61.46(d)).

question. The issue is not whether our rates were within the appropriate limits under price caps. The issue is whether those limits should have been calculated differently so that the correct rate caps were in place; not whether rates were within the "zone of reasonableness." As we have shown, if we are not permitted to adjust the rate caps upward, the price cap rules have been violated.

MCI goes on to argue on policy grounds that misallocating sharing permits the type of cross subsidy the price cap rules were intended to prevent.[9] However, the whole reason Pacific decided to exclude end user revenues from the sharing allocation was because we were trying to prevent cross subsidy. Since EUCL revenue is not affected by sharing, Pacific made the determination not to include these revenues in the cost causative allocation. Including EUCL revenues in the sharing allocation has the effect of causing purchasers of services from the other baskets to subsidize common line basket purchasers. Because Pacific was mindful of this concern, we excluded the revenue. It is amusing that MCI has pointed to the reverse problem as a justification for why we should now be penalized.

MCI's theory also is that certain customers may be advantaged or disadvantaged by the allocation scheme we chose to use since some customers buy primarily from one basket, and others utilize services from other baskets. However, the Commission rules do not require that sharing benefit each carrier equally. We do not distribute sharing dollars carrier by carrier so that each is assured its 50%. Rather, the Commission's rules require sharing based on total interstate revenues.[10] So, the fact that certain customers may benefit disproportionately from sharing is irrelevant.

[9] MCI p.14.
[10] 7 FCC Rcd 4731.

AT&T and MCI claim that the methodology proposed by Pacific to reallocate sharing will result in a windfall for Pacific. What neither of these parties admit, though, is that if they prevail, they are the recipients of lower than proper rates to effectuate the refund. The windfall goes to them. Had the Commission resolved this issue in a timely fashion there would have been no revenue impact either for Pacific Bell or its IXC customers.

CONCLUSION

Thus, AT&T and MCI's concerns are unfounded. The only equitable way to correct the misallocation, and the only way permitted by the Commission's rules, is to adjust all baskets so that the sharing misallocation can be corrected. Otherwise, Pacific would be forced to share more than the required amounts during the years in question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brenda K. Dinan, hereby certify that the Reply Comments of Pacific Bell and on CC Docket 93-193, has been served September 23, 1997, to the Parties of Record.

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